(2) 06-524 Aug. 19, 2006

APPENDICES

Appendix A Order of the Supreme Court of Pennsylvania
June 6, 2006

Appendix B Order of the Supreme Court of Pennsylvania
May 1, 2006

Appendix C Opinion of the Workers' Compensation
Appeal Board January 26, 2005

Appendix D Decision of the Workers' Compensation Judge
January 23, 2004

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ALBERTA A. SWAN,	: No. 718 MAL 2005
	:
Petitioner	: Application for
	: Reconsideration
v.	:

WORKERS' COMPENSATION APPEAL BOARD (WAL-MART # 2334 AND A.I.G. CLAIM SERVICES, INC.),

Respondents

ORDER

PER CURIAM

AND NOW, this 6th day of June, 2006, the Application for Reconsideration is hereby DENIED.

"s/Norina K. Blynn"
Chief Clerk
Seal of the Supreme Court of Pennsylvania
True & Correct Copy
Attest: June 06, 2006

Appendix A

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ALBERTA A. SWAN,	: No. 718 MAL 2005
	:
Petitioner	: Petition for Allowance
	: of Appeal from the
	: Order of the
v.	: the Commonwealth
	:Court

WORKERS' COMPENSATION APPEAL BOARD (WAL-MART # 2334 AND A.I.G. CLAIM SERVICES, INC.),

Respondents

ORDER

PER CURIAM

AND NOW, this 1st day of May, 2006, the Petition for Allowance of Appeal is hereby DENIED.

"s/Norina K. Blynn"
Chief Clerk
Seal of the Supreme Court of Pennsylvania
True & Correct Copy
Attest: May 01, 2006

Appendix B

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION APPEAL BOARD
901 N. 7TH STREET; 3RD FLOOR SOUTH
HARRISBURG, PA 17102-1412

Opinion Mailing Date: 01/26/05
A04-0448

ALBERTA A. SWAN, Claimant
177 EASTBROOK ROAD
SMOKETOWN, PA 17576

WAL-MART # 2334, Defendant
2304 LINCOLN HIGHWAY EAST
LANCASTER, PA 17601

A.I.G. CLAIM SERVICES, INC.
P.O. BOX 499
ESSINGTON, PA 19029

RICHARD J. MCCRACKEN, ESQ.
1857 WM PENN WY, STE 101
P.O. BOX 10248
LANCASTER, PA 17605

Attached is a copy of an Opinion from the Workers' Compensation Appeal Board filed this date in the above-captioned case. An appeal to the Commonwealth Court of Pennsylvania may be taken by any party aggrieved by the Board's decision, provided such appeal is taken within (30) days after the mailing date of the Board's decision. The Board has nothing to do with the filing or processing of further appeals to the Court. Further appeals may be filed in person or by mail (accompanied by U.S. Postal Services Form 3817) with the Prothonotary of the Commonwealth Court of Pennsylvania, Room 624 Irvis Office Building, Harrisburg, Pennsylvania, 17120. - Attachment

Appendix C

COMMONWEALTH OF PENNSYLVANIA
WORKERS' COMPENSATION APPEAL BOARD
HARRISBURG

A04-0448

ALBERTA A. SWAN, Claimant : APPEAL BY
177 EASTBROOK ROAD : CLAIMANT FROM
SMOKETOWN, PA 17576 : ORDER OF WC
: JUDGE
: BENISCHECK

vs.

WAL-MART # 2334, Defendant :
2304 LINCOLN HIGHWAY EAST:
LANCASTER, PA 17601 : HARRISBURG /
: APRIL, 2004

AFFIRMED

A.I.G. CLAIM SERVICES, INC. : INSURANCE
P.O. BOX 499 : CARRIER
ESSINGTON, PA 19029

: CLAIMANT'S
: COUNSEL

RICHARD J. MCCRACKEN, ESQ. : DEFENDANT'S
1857 WM PENN WY, STE 101 : COUNSEL
P.O. BOX 10248
LANCASTER, PA 17605

Opinion

Davis, Commissioner:

This matter is presently before the Workers' Compensation Appeal Board on Claimant's Appeal from the Decision of Workers' Compensation Judge Robert Benischeck (Judge), denying Claimant's Claim Petitions. We affirm the Decision of the Judge.

Our review of the record indicates that Claimant, Alberta Swan, filed Claim Petitions on or about November 6, 2001 and March 3, 2003 for alleged injuries sustained while in the employ of Defendant, Wal-Mart Store 2334. Claimant alleged that on September 18, 2001, she sustained work-related psychological and physical injuries. Defendant filed timely Answers denying the allegations.

The Judge denied Claimant's Claim Petition. The Judge found that Claimant was not exposed to abnormal working conditions. Claimant did not establish that she sustained any physical injury. He also found that Claimant did not establish that she was disabled. Claimant appeals this Decision.

The Board's scope of review on appeal is limited to determining whether the Judge has committed an error of law or whether the findings of fact are supported by substantial, competent evidence. *Pertile v. Workmen's Compensation Appeal Board* (*Construction Engineering Consults, Inc.*), 546 Pa. 569, 687 A.2d 367 (1997); *Bethenergy Mines Inc. v. Workmen's Compensation Appeal Board* (*Skirpan*), 531 Pa. 287, 612 A.2d 434 (1992).

Claimant argues on appeal that the Judge erred in denying her Claim Petitions. In a claim petition, the claimant bears the burden of establishing all the necessary elements. *Inglis House v. Workmen's Compensation Appeal Board* (*Reedy*), 535 Pa. 135, 634, A.2d 592 (1993). When there is no obvious causal connection between the injury and the

work-related cause, unequivocal medical testimony is necessary to establish that connection. *Lynch v. Workmen's Compensation Appeal Board* (*Teledyne Vasco*), 545 Pa. 119, 680 A.2d 847 (1996); *Cromie v. Workmen's Compensation Appeal Board* (*Anchor Hocking*), 600 A.2d 677 (Pa. Cmwlth. 1991). The claimant has the burden of proving, by objective evidence, that he or she has suffered a mental injury and that such injury is other than a subjective reaction to normal working conditions. *Davis v. Workers' Compensation Appeal Board* (*Swarthmore Borough*), 561 Pa. 462, 751 A.2d 168 (2000); Martin *v. Ketchum, Inc.*, 523 Pa. 509, 568 A.2d 159 (1990); Carnegie *Mellon University v. Workmen's Compensation Appeal Board* (*Lenz*), 645 A. 2d 389 (1994); *appeal denied*, 542 Pa. 675, 668, A.2d 1137 (1995). To meet that burden, the claimant must demonstrate either (1) that actual extraordinary events occurred at work, which can be pinpointed in time, causing the trauma experienced by him or her, or (2), that abnormal working conditions over a longer period of time caused the mental injury. *Parson v. Workmen's Compensation Appeal Board* (*Springettsbury Township*), 642 A.2d 579 (1994). Psychiatric injury cases are highly fact-sensitive. *Hershey Chocolate Co. v. Commonwealth,* 546 Pa. 27, 682 A.2d 1257 (1996). Consequently, in determining whether actual working conditions are abnormal, they must be considered in the context of the specific employment. *Id.* The question of whether the facts found by the WCJ support the conclusion that the claimant has been exposed to abnormal working conditions is a question of law fully reviewable on appeal. *Id.*

Claimant testified that she was employed by Defendant as an accounting clerk. She worked in the cash room preparing the receipts for deposit, accounting and distributing paychecks. Entrance to the cash room can only be gained from the accounting room. (N.T., 3/14/02, pp. 6-

9). Claimant testified that she was alone in the office at 2:00 am. Someone began hollering at the accounting room door, demanding entry and knocking forcefully. She recognized the voice. Claimant testified that she had seen the man previously "doing something to the cameras up at the top of the building." He had also previously been in the cash room with a manager. The man was denied entry; he began try to break the door down with his body. She paged her manager, who did not respond, and her husband who worked in the produce department. She also dialed 9-1-1. *Id.* At 14-22. After the incident, Claimant had difficulty sleeping. Her blood pressure was high. Claimant testified that she has not returned to work because of her mental condition. *Id.* At 22-25.

Claimant subsequently became aware that the man seeking entrance to the accounting room was Michael Schmidt. She testified that she was not aware that he was an employee, but she reimbursed $27.54 to Mr. Schmidt as a travel expense. She also saw Mr. Schmidt in the cash room, accompanied by a manager. (N.T., 3/26/03, pp. 32-39).

Defendant presented the testimony of Michael Schmidt. Mr. Schmidt was employed by Defendant as a loss prevention officer. Mr. Schmidt met Claimant "a couple of times" prior to the incident. He met Claimant while getting travel and meal voucher money. Mr. Schmidt explained that he was required to fill out a form, present it to a manager, and then the manager and he would go to the cash office to receive the money. Mr. Schmidt and other loss prevention officers were introduced to Claimant on the night of the incident, prior to the incident. (N.T., 8/12/03, pp. 19-23). Later, Mr. Schmidt went to the cash room in order to check the monitor and camera system. He knocked on the accounting room door, identified himself, and looked at the camera so that the occupants of the accounting room could identify him. He knocked "a couple of times" in what he

characterized a "regular knock." Mr. Schmidt was told to leave because "she didn't know who I was." He identified himself again and was told the police would be called if he did not leave. *Id.* At 24-29.

Defendant also presented the testimony of Brian Smith. Mr. Smith was Defendant's district loss prevention supervisor. At the time of the incident, he was installing and upgrading
surveillance equipment. Earlier in the evening, he was in the cash room with Claimant and Mr. Schmidt, discussing camera placement. Mr. Smith directed Mr. Schmidt to go the accounting room to check supplies and report on the camera placement. He was not present when Mr. Schmidt tried to gain access to the accounting room (N.T., 5/13/03, pp. 79-90).

Claimant presented the testimony of Farrell Crouse, M.D. Dr. Crouse examined Claimant after the September 18, 2001 incident and found her "very anxious" and depressed secondary to the anxiety. Claimant's condition has improved measurably over the course of treatment. (Dep. Dr. Farrell Crouse, 6/23/03, pp. 10-13). Dr. Crouse had treated Claimant prior to the work incident for "an adjustment reaction due to family problems." (Dep. Dr. Crouse, p. 23).

Defendant presented the testimony of Abram Hostetter, M.D. Dr. Hostetter examined Claimant on March 13, 2002, at which time he obtained a history. (Dep. Dr. Abram Hostetter, 8/5/03, p. 12). He found Claimant to have an Axis 2 histrionic personality disorder. He explained that she has a pattern of functioning which is characterized by excessive emotionality; reacting in an excessive way to situations that may not cause other people to have any trouble. (Dep. Dr. Hostetter, pp. 34-35). He did not believe that Claimant has a psychological disorder related to the work incident. She was able to return to work. (Dep. Dr. Hostetter, pp. 39-41). Dr. Hostetter opined that Claimant

"overreacted to a situation that she could have come to understand and handled in a very different way", but "she, because of her personality makeup, overreacted to that situation and turned it into a kind of claim that some, that things were going on that in no way were really going on." (Dep. Dr. Hostetter, p. 46).

The Judge found the testimony of Mr. Schmidt, Mr. Smith, and Dr. Hostetter credible. The Judge has complete authority over questions of credibility, conflicting medical evidence and evidentiary weight. *Sherrod v. Workmen's Compensation Appeal Board* (*Thoroughgood, Inc.*), 666 A.2d 383 (Pa. Cmwlth. 1995). The Judge can accept or reject the testimony of any witness, in whole or in part. *Lombardo v. Workers' Compensation Appeal Board* (*Topps Company, Inc.*), 698 A.2d 1378 (Pa. Cmwlth. 1997). The Board will not disturb the Judge's findings if they are supported by substantial, competent evidence. *Greenwich Collieries v. Workmen's Compensation Appeal Board* (*Buck*), 664 A.2d 703 (Pa. Cmwlth. 1995).

The Court in *Container Corporation of America v. Workmen's Compensation Appeal Board*, 429 A.2d 1264 (Pa. Cmwlth. 1981) explained why a judge can best determine issues of credibility. In *Container Corporation*, the Court stated:

> In a workmen's compensation case, the referee has a critical fact finding role; he alone hears the testimony and observes the witnesses first hand. In proceedings pertaining to benefits, therefore, it is for the referee to determine the credibility and weight of the evidence. In exercising that broad discretion, he may accept or reject the testimony of any witness in whole or in part. This includes the testimony of expert medical witnesses. It is also within the referee's domain

> to resolve any conflicts or equivocations in testimony and determine its relative merit. 429 A.2d at 1267.[1]

We have determined that the Judge's Decision denying Claimant's Claim Petition is supported by substantial competent evidence. Claimant presented no testimony establishing that she sustained any physical injuries. We agree that Claimant's working conditions were not abnormal. Even if the Judge were to accept Claimant's version of the facts, the incident did not arise to the level of abnormal working conditions. In *Philadelphia Newspapers, Inc. v. Workmen's Compensation Appeal Board (Guaracino)*, 544 Pa. 203, 675 A.2d 1213 (1996), the Pennsylvania Supreme Court found that harassment and abuse did not constitute abnormal working conditions. The Court did not find abnormal working conditions where the claimant feared bodily harm from potentially criminal conduct. *City of Pittsburgh v. Workers' Compensation Appeal Board (Plowden)*, 804 A.2d 82 (Pa. Cmwlth. 2002). In this case, the Judge did not accept Claimant's testimony, but instead found Mr. Schmidt credible. Based on Mr. Schmidt's testimony and Dr. Hostetter's opinions, the Judge found, and the evidence supports, that Claimant's reaction to the events was atypical.

[1] See also *Aluminum Company of America v. Workmen's Compensation Appeal Board*, 380 A.2d 941 (Pa. Cmwlth. 1977) (the determination of a witness's credibility lies within the province of the judge because he had heard the witness's testimony and observed his demeanor).

In summary, Claimant could not prevail because she did not present any credible medical testimony evidencing a physical injury and the Judge did not believe her version of the events. No error of law was committed. Accordingly, we enter the following:

Order

The Decision and Order of the Judge denying Claimant's Claim Petitions is hereby Affirmed.

By the Board:
"s/William R. Davis"
Commissioner
January 26, 2005

Concurred in By:

"s/Gail L. O'Neal"
Commissioner

"s/_____"
Commissioner

"s/ Susan M. McDermott"
Commissioner

"s/Joseph T. Rafferty"
Commissioner

"s/Joseph P. Santone
Commissioner

"s/Robert T. McIntyre"
Commissioner

"s/_____"
Commissioner

Circulation Date: 01/27/2004

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
BUREAU OF WORKERS' COMPENSATION
717-299-7591

ALBERTA A SWAN
177 EASTBROOK RD
SMOKETOWN, PA 17576-0000

DECISION RENDERED COVER LETTER

Bureau Claim Number: **2340253**
Insurer Claim Number:

Petitions
Claim-Pet
Claim-Pet

JUDGE: Robert Benischeck
315 West James Street, Suite 206
Lancaster, PA 17603

ALBERTA A SWAN
177 EASTBROOK RD
SMOKETOWN, PA 17576-0000

Vs

WALMART # 2334
2304 LINCOLN HWY EAST
LANCASTER, PA 17601

RICHARD J. McCRACKEN ESQUIRE
POST & SCHELL PC
PO BOX 10248
LANCASTER, PA 17605-0248

The attached Decision of the Judge is final unless an appeal is taken to the Workers' Compensation Appeal Board as provided by law.

Appendix D

AMERICAN INTERNATIONAL ADJ CO
PO BOX 499
ESSINGTON, PA 19029-0499

If you do not agree with this Decision, an appeal must be filed with the Workers' Compensation Appeal Board within 20 days from but not including the date of this notice.

Forms for an appeal may be obtained from the Workers' Compensation Appeal Board, Capital Associates Building 901 North Seventh Street Third Floor South Harrisburg, PA 17102

Employee Witnesses & Exhibits:

Ray Swan
Brian Smith
Michael Axe
Alberta Swan
Alberta Swan
Alberta Swan
Alberta Swan
Sharon Tomeka Swan

C-01 Memo of Roy Swan
C-02 Claimant statement, 7/30/02
C-03 Subpoena of Dr. Auerbach
C-04 Claimant Statement, 10/24/01
C-07 Deposition of Dr. Crouse
C-08 Oath of Hippocrates
C-09 MRI Report 2/21/03
C-10 Confidential surveillance report 7/17/02

Employer Witnesses & Exhibits

Michael Schmidt

D-01 Cash Fund Transfer Logs
D-02 Depo of Dr. Abram Hostetter 8/5/03

Hearings

8/12/2003	13:30:00	Held
5/13/2003	09:00:00	Held
3/26/2003	09:45:00	Held
3/5/2003	09:00:00	Held
1/15/2003	11:45:00	Held
12/2/2002	09:30:00	Held
7/31/2002	13:00:00	Held
5/3/2002	09:00:00	Held
3/14/2002	13:00:00	Held
2/14/2002		Canceled by Employee Counsel On 02/11/02
1/24/2002		Canceled by Employee Counsel On 01/14/02

FINDINGS OF FACT

1. The Claimant filed a Claim Petition in November of 2001 alleging an injury of September 18, 2001 while in the course and scope of her employment with the Employer, Wal-Mart. The Petition seeks total disability as of September 18, 2001. This Petition was originally assigned to Judge Richard Kelley and reassigned to this Judge on August 2, 2002 due to the former's terminal illness.
2. An Amended Claim Petition was filed in March, 2003, again alleging an injury of September 18, 2001 and seeking total disability as of that date. At the hearing of March 5, 2003 Claimant explained that the Amended Petition was filed to insure that her Claim included both a physical and psychiatric injury.
3. In support of her Petition, the Claimant presented her own testimony on at least three dates, March 14, 2002, March 5, 2003 and March 26, 2003. Claimant also presented the testimony of her husband Roy Swan, her daughter Sharon Tomeka Swan, and the deposition of Dr. Farrell Crouse. The Claimant also submitted statement from her and her husband dated October 24, 2001, a copy of the Hippocratic Oath and an MRI report of the low back dated February 21, 2002 and the police report.
4. In opposition to the Petition, the Employer submitted the deposition testimony of Dr. Abram Hostetter and presented the live testimony of Dennis Colbert, Brian Smith, Michael Axe and Michael Schmidt, and also

submitted the Cash Fund Transfer Log from September 2001.

5. Claimant first began working at Wal-Mart in September of 2000 as an accounting clerk. Claimant's shift was from 10:00 P.M. to 7:00 A.M. and she earned $8.84 per hour for an average weekly wage of $373.60. Claimant worked in the cash room.
6. In the cash room Claimant would take the bags from the cashier and prepare the bags for the bank. This would mean straightening out the money, entering the amounts into the computer and getting the money ready for deposit.
7. The cash room is attached to the accounting room. One has to go through the accounting room to get into the cash room and this is the only entrance into the cash room.
8. The accounting room door had a lock, which Claimant described as loose. There was a TV monitor outside the accounting room door which allowed someone in the accounting room to see who was outside the door. The cash room door also had a lock and Claimant described this door as very heavy and very secure.
9. The only individuals who had access to the accounting room outside of the workers assigned to that location was the management of Wal-Mart.
10. Claimant was working in the cash room on September 18, 2001, between 2:00 A.M. and 3:00 A.M. Claimant was alone in the office when she heard a man hollering at the accounting room door to open the door and let him in. Claimant testified that the man was knocking a very heavy knock. The knocking and hollering was described by Claimant as "steady". According to Claimant, she next heard a body push against the door. Claimant paged Kevin the Manager. When he did not respond, Claimant called her husband who worked in the Produce Department of Wal-Mart, and then called 911. Ultimately, the

police, the Manager, and the husband arrived before the man at the door gained entrance.

11. Claimant testified that during this incident she could she the man through the TV monitor and she recognized him as the man she had earlier seen doing something to the cameras near the ceiling of the store. She saw this man in the store many times but less than a dozen. She also recognized his voice. Claimant recognized the man as being in the cash room previously with management, and Claimant gave the man money for mileage and food reimbursement at the direction of management. She did not know whether he was an employee. Claimant did not testify that this man seeking entry used profanity, verbally threatened her, or was seen carrying a weapon.
12. Claimant was presented with a Cash Log which recorded transfers from the cash fund. Anytime she took money out of cash, she and the recipient would sign the sheet and it would be approved by management. Claimant admitted that the sheet on September 5, 2001 indicated that she had given money in the amount of $27.54 to Michael Schmidt, who proved to be the man at the door.
13. Under cross-examination, Claimant testified that she did not know at the time of the incident that Wal-Mart was installing surveillance cameras throughout the store, and she denied that management ever told her that the man at the door was part of the work crew installing cameras.
14. Claimant finished working her shift. She testified that when she went home and tried to sleep, she realized that her blood pressure was elevated. She began treating with Dr. Crouse. Dr. Crouse has been Claimant's treating physician for thirty years. Claimant testified that her prior psychiatric treatment was for family matters. She was taking Librium and anti-anxiety medicine for at least two years before this

incident. Dr. Crouse has treated her since she was approximately 24 years old for high blood pressure. After this incident, Dr. Crouse treated Claimant through counseling and medication, specifically Wellbutin.

15. Claimant testified at the hearing of March 14, 2002 that she had not gone back to work at Wal-Mart since the incident of September 18, 2001 because of her mental condition. In her initial testimony, she did not state that she was disabled due to physical reasons.
16. At the time of the March 5, 2003 hearing the Claimant testified that this incident also resulted in physical injuries including a worsening of her blood pressure, a worsening of her diabetes, memory loss, a worsening of her back condition, numbness in both hands, headaches, constipation, pain in her low back, thighs and calves. However, no medical testimony was presented to establish that these physical injuries or any such problems were work related or disabling.
17. Claimant returned to Wal-Mart parking lot a number of times as part of her psychological therapy but could not get into the building because of anxieties, according to Claimant.
18. Claimant admitted that the incident that night was not a robbery and that the police did not find any criminal action.
19. Claimant had a herniated disc in her back for which she had surgery in 1991, according to her testimony.
20. The Judge reviewed Claimant's statement dated October 24, 2001 and notarized on July 31, 2002, and found that it is fairly consistent with her testimony concerning the incident of September 19, 2001.
21. In support of her Claim, the Claimant also presented the testimony of her daughter, Sharon Tomeka Swan. The daughter testified that she has seen a drastic change in her mother since the work incident. The

daughter described problems that Claimant experienced while dressing and walking.

22. Sharon Tomeka Swan further testified that the day after the incident she and her father went to the store to speak to the manager, Dennis Colbert. According to the daughter, Dennis Colbert testified that there was a videotape of the incident and that he would view it. Ms. Swan admitted that Mr. Colbert did not have the videotape in his hand at the meeting and that Mr. Colbert did not state that he had already viewed any video.
23. Roy Swan testified on May 3, 2002 that he received a call from his wife between 2:00 A.M. and 3:00 A.M. on September 18, 2001. He immediately went to the accounting room where he saw three men outside the door, approximately eight feet away. He testified that when he asked if anyone harassed his wife, the man started to walk toward Roy with a mean look on his face. Mr. Swan felt threatened. Just as he reached Mr. Swan the manager, Kevin, and the police arrived.
24. Mr. Swan did not see or hear any of the men at the door yell at the Claimant, bang on the door or threaten his wife. He confirmed that his wife was still in the accounting room behind the door by the time management and the police arrived.
25. Mr. Swan confirmed that Claimant had high blood pressure and low back problems before this accident. However, he testified that her health has worsened since the incident. Claimant cannot cook, do housework or even communicate with her husband as she did before the accident.
26. In September of 2001 Mr. Dennis Colbert was the manager of this Wal-Mart store in Lancaster. He was not present at the store at the time of the incident.
27. Mr. Colbert testified that in September 2001 Wal-Mart was installing a new camera security surveillance system in this store. The individuals who

were handling the cameras were Wal-Mart employees from Loss Prevention. The Loss Prevention supervisor was Brian Smith.

28. The surveillance system was periodically shut down, typically over night, in order to work on the cameras. Mr. Colbert explained that the system would be shut down overnight because that was when Wal-Mart was least busy and the least amount of occurrences would happen. This testimony is corroborated by Brian Smith.
29. Under normal circumstances, outside the accounting office would be videotaped and the videotape saved for thirty days. This is in addition to the closed circuit camera outside of the accounting office which allowed a worker inside the accounting office could see who was outside the door. The images from this camera were never recorded on videotape. This testimony is consistent with Mr. Smith's description of the security system.
30. Mr. Colbert agreed that he had a meeting with Mr. Swan and his daughter on September 19, that lasted from one to one and a half hours. During this meeting he was under the assumption that the cameras videotaped the incident outside the accounting door. He testified that he probably stated that he would view the videotape, if it was available.
31. However, when Mr. Colbert investigated the videotape after the meeting, he learned that no videotape existed because the system was not operational that night because of the work being performed on the surveillance system.
32. Mr. Colbert also explained the cash fund transfer (CFT) system. Mr. Colbert testified that any time cash is given out of the office, it is recorded on the cash fund transfer log on the store accounting sheet. The log is signed by the manager and also the employee who is given the money.

33. Based on the testimony of Mr. Colbert and this Judge's review of the log, this Judge finds that Mrs. Swan gave money to Mr. Schmidt on at least two occasions, September 5 and September 12, 2001. Even Claimant admitted, as noted above in Finding of Fact #12, that she gave money to Mr. Schmidt on September 5, 2001.
34. Mr. Brian Smith was employed by Wal-Mart in September 2001 as District Loss Prevention Supervisor. His area included the Lancaster store where this incident occurred.
35. Mr. Smith testified that in September of 2001, Wal-Mart was overhauling and performing an overall update of the security system at the Lancaster store. He and a crew which included Michael Schmidt and Michael Axe were performing the overhaul. He and his crew wore Wal-Mart badges to identify themselves as security personnel.
36. Consistent with testimony of Mr. Colbert, Mr. Smith testified that there was no videotape of this incident outside of the accounting door because the system was down for the overhaul.
37. Mr. Smith testified that he and Mr. Schmidt were in the accounting room/cash room during the shift of this incident prior to 2:00 A.M. and he testified that Mrs. Swan was present while they were discussing the placement of the cameras. He could not recall if there were any verbal interactions between Mrs. Swan and Mr. Schmidt.
38. Mr. Smith and his crew went to lunch between 1:00 A.M. to 2:00 A.M. in morning. Upon their return, the supervisor instructed Mr. Schmidt to go to the accounting office to finish looking at whatever supplies were needed to complete the work. Mr. Smith told Mike Schmidt to begin installing the cameras in the accounting room.

39. After Mr. Schmidt was gone for approximately five to ten minutes, Mr. Smith was called to the front of the store for a situation that needed his attention. When Mr. Smith came to the accounting room, Kevin the assistant manager was approaching and Michael Schmidt was standing off to the side. Michael Schmidt told Mr. Smith that he went to the accounting office and knocked on the door but was not allowed in the room. The police arrived. Mr. Smith described Mr. Swan as very upset and yelling about individuals harassing his wife.
40. Mr. Smith testified that there was no robbery that night and that at no point did he see anyone threaten Mrs. Swan, either physically or verbally. Mrs. Swan remained in the accounting room until the police arrived.
41. Mr. Michael Axe was employed in September of 2001 by Wal-Mart in Loss Prevention. Mr. Axe is a retired police sergeant and was an elected constable for twelve years.
42. According to Mr. Axe, after lunch on September 18, he and Michael Schmidt went to the cash office to check on cameras and perform work in the area. On his way to the accounting area, Mr. Axe stopped in the Men's room for approximately 1 to 2 minutes to wash his hands. When Mr. Axe arrived in the accounting area, Mr. Schmidt was standing outside the office and stated that the women had called 911 for a robbery in progress.
43. The significance to Mr. Axe's testimony is that the police were called within a few minutes of when Mr. Schmidt presumably would have arrived at the accounting room.
44. In September 2001 Michael Schmidt was working for Wal-Mart as a Loss Prevention Officer. On September 18, 2001, he was part of the crew overhauling security camera systems in the store.

This is somewhat corroborated by Claimant's testimony when she indicated that she saw him working near the cameras in the ceiling of Wal-Mart. Prior to his employment with Wal-Mart, he was a police officer for a period of two years, worked in closed circuit television stores at other areas, and served in the Marines. At the time of the testimony, he was employed as a police officer and was no longer an employee of Wal-Mart.

45. Mr. Schmidt testified that he met Alberta Swan while working as a Loss Prevention Officer in Wal-Mart prior to this incident. He was introduced to Mrs. Swan a couple of times by managers. He received travel voucher money from Mrs. Swan which is corroborated by the CFT logs described above.
46. According to Mr. Schmidt, in the evening of September 18, 2001 Mr. Schmidt and others from the Loss Prevention crew were in the cash office with an assistant manager, and were introduced to Mrs. Swan as Loss Prevention workers who would be in working the area of the cash office. On a second occasion that evening he was in the cash office to check the layout for the placement of cameras.
47. After lunch Mr. Schmidt was sent by his supervisor, Brian Smith, to the cash room with Michael Axe to work on the camera system. Michael Axe was side tracked at the restroom. When Mr. Schmidt arrive at the accounting door, he testified that he knocked on the door and announced himself as Mike from Loss Prevention and looked up into the closed circuit camera so that personnel in the accounting room would have an opportunity to recognize him.
48. Mr. Schmidt testified that he knocked on the door a couple of times and he described his knock as "regular". He further testified that he identified himself and requested admittance to the room and

denied threatening Mrs. Swan in any way when he was at the door.

49. According to Mr. Schmidt, Mrs. Swan indicated that she did not know who he was and warned that if he did not leave immediately she was going to call the police. Mr. Schmidt immediately went to use a phone to call his supervisor, Brian Smith, to advise him of what was transpiring. Mr. Schmidt testified that he might have been at the door for 15 to 20 seconds prior to walking away from the door and making the phone call to his supervisor.
50. While waiting for his supervisor, Mr. Schmidt saw Mr. Swan approach and guard the accounting room door. Ultimately the police arrived and investigated the incident. He denied any personal relationship with the investigating officer, and no evidence was offered to the contrary.
51. Mr. Schmidt testified that he did nothing that would cause the Claimant to believe that he was threatening her or attempting a robbery.
52. Dr. Farrell A. Crouse is Claimant's treating physician who specializes in psychiatry. He is competent to testify as a medial expert in this case. His office is in New Jersey.
53. Dr. Crouse testified that he saw Claimant very soon after the incident of September 18, 2001 at which time Claimant was very anxious and depressed secondary to the anxiety. Claimant had anger toward Wal-Mart.
54. Dr. Crouse's treatment included numerous telephone conversations with the Claimant and anti-anxiety and anti-depressant medication.
55. According to Dr. Crouse, Claimant improved immeasurably since the initial treatment. As of his disposition of June 23, 2003, Claimant took only a minor amount of medicine, as needed.
56. Claimant treated with Dr. Crouse prior to September 18, 2001 for an adjustment reaction due to family

problems and Dr. Crouse characterized this prior problem as not a serious illness. Dr. Crouse did not release Claimant's prior medical file to the Employer in an effort to respect Claimant's privacy because it did not constitute a valid subpoena in New Jersey.

57. Dr. Crouse did not testify that Claimant suffered a physical injury or an aggravation of any physical injury as a result of this incident at Wal-Mart. Though Claimant testified that she treated with Dr. Auerbach for physical injuries, his testimony concerning his findings and opinions is not in evidence. In short, there is no expert medical evidence that this work incident caused or aggravated any physical condition or injury.
58. Dr. Crouse did not testify that Claimant was disabled as a result of her mental condition or the Wal-Mart incident.
59. Dr. Abram Hostetter is board certified in psychiatry and maintains an active clinical practice in psychiatry in central Pennsylvania. He is qualified to testify in this case as a medical expert in psychiatry.
60. Dr. Hostetter performed a psychiatric evaluation on the Claimant on August 13, 2002 at the request of the Employer. He performed a mental status evaluation which is a structured interview in which he is observes and listens to the patient to determine their appearance, alertness, consciousness, orientation, comprehension, ability to understand questions, ability to formulate answers to the questions, and their thought contents as well as their thought processes. He did not review the earlier medical records of Dr. Crouse since they were not available to him. He explained that these records would have been helpful, but that he was not precluded from reaching a conclusion without them.
61. Dr. Hostetter noted in the history that the Claimant treated with Dr. Crouse for thirty years. She was

taking a tranquilizer, Libruim which is used for anxiety, though it is not used for major mental illnesses. She had been on and off Wellbutrin but restarted the medication five days before the examination.

62. As Claimant spoke, Dr. Hostetter noted that she had no evidence of any memory or cognitive difficulties. She was extremely articulate. She maintained a pleasant mood throughout the interview, and even laughed and chuckled. There was nothing to suggest that she was anxious or depressed. She gave no evidence of having any thought disorder or memory impairment. Claimant tended to ramble into a variety of topics as she spoke but he did not find this as evidence of a psychotic disorder. Among other things, they spoke of her various medical conditions, her family, and the event at Wal-Mart of September 18, 2001.
63. Dr. Hostetter further testified that when asked to describe her psychiatric symptoms she was suffering, she spoke of having panic attacks and gave an example of such an incident. However, Dr. Hostetter opined that she did not suffer a true panic attacks disorder because she did not describe the pattern, frequency or degree of symptoms that constitute the diagnostic criteria of that disorder.
64. Dr. Hostetter diagnosed Claimant with a histrionic personality disorder which is an Axis II psychiatric disorder and is not work-related. An Axis II disorder is ongoing and longstanding. An Axis I psychiatric disorder is more serious and Dr. Hostetter found no evidence of an Axis I disorder. Dr. Hostetter further explained that a personality disorder means that the person has a pattern of functioning which is characteristic of the individual over a long period of time, which causes some problems in their social, employment or family relationships. A personality

disorder is not caused by any one particular event. A histrionic personality disorder involves a pattern of excessive emotions and means that Claimant reacts in excessive ways to situations that may not cause other people to have any trouble. Dr. Hostetter also found that Claimant was dependent on the use of Librium for which she had taken for many years, though this was not interfering with her mental functioning.

65. Dr. Hostetter found that Claimant's speech was excessively impressionistic and lacking in significant information. He explained that she spoke about things in a very dramatic fashion, but the content did not seem to be that significant. The doctor explained that people with Claimant's personality type are somewhat dramatic and exaggerate their expression of emotions.
66. Dr. Hostetter opined that the Claimant has no psychiatric disorder as a consequence of this incident that occurred on September 18, 2001. If Claimant suffered a psychiatric injury at Wal-Mart, which Dr. Hostetter disputes, Claimant fully recovered from such an injury. The basis of this opinion is that she did not describe a particular set of psychiatric symptoms that followed this incident. Rather she described a person who over reacted to a normal event at her workplace that evening and then magnified the event and saw herself as being markedly impaired. However, Claimant does not fit any clinical psychiatric disorder.
67. Dr. Hostetter found no psychiatric reason why the Claimant could not return to her former duties at Wal-Mart.
68. Claimant submitted the Hippocratic Oath into evidence to impeach Dr. Hostetter. This Judge has reviewed the Oath but does not find that it impeaches the physician.
69. Claimant also submitted an MRI report of her back dated February 21, 2002. This shows discogenic end

plate changes at L3-4 and L4-5, facet arthropathy with spondylotic annular bulging at L3-4 and moderate to severe central canal narrowing at L3-4. There is no medical evidence that such changes are related to the Wal-Mart incident or that such changes are disabling.

70. This MRI report was offered by Claimant in response to Dr. Hostetter's disposition. Dr. Hostetter offered an expert opinion in psychiatry, and testified exclusively concerning her mental condition. He did not offer an opinion concerning Claimant's physical condition or specifically her lower back. The MRI report is not significant for Dr. Hostetter's opinion. Though it is mentioned in this report, there is little or no reference to the MRI in his actual testimony. This Judge finds that the MRI does not impeach Dr. Hostetter's credibility concerning Claimant's psychiatric condition.
71. Claimant also offered into evidence a subpoena served by the Employer onto Dr. Auerbach for the production of his records. The subpoena was served on April 10, 2002 requesting the information by April 25, 2002. Claimant highlights for this Judge that at the hearing for May 3, 2002 the Employer counsel stated that he still needed the records of Dr. Auerbach. She further highlights for the Judge that at the hearing of December 2, 2002 the Employer stated that he did not know if he received these records yet. Claimant believes that the Claimant attorney had the records and that any discrepancy is "crucial to her case" for impeachment. Employer counsel advised this court that Dr. Auerbach's records were in fact received by May 20, 2002, and apologized to the court if he misspoke on May 5, 2003. This Judge does not find this discrepancy to be significant. This Judge does not find any malicious intent by defense counsel and accepts his statement that he may simply have misspoken. Given the length of the hearings and

complexity of this matter, this Judge finds counsel's explanation to be entirely plausible.

72. This Judge has also reviewed the police report concerning the events of September 18, 2001. This report confirms that Corporal Leighty responded to a 911 call to the Wal-Mart store on September 18, 2001 at 2:42 A.M. The complaintant was Alberta Swan stating that a man was harassing her at the door of the cash room. The police officer determined that the incident was not criminal and would not be handled as such.
73. This Judge observed all the fact witnesses testify, and observed the Claimant on several occasions. This Judge finds the testimony of Michael Schmidt, Brian Smith, Michael Axe and Dennis Colbert to be credible to the extent they are summarized above. Their testimony is consistent on the essential facts of this case and is corroborated by other evidence including the cash fund transfer log. This Judge does not find the Claimant or her husband to be malicious, but to the extent that there is a conflict, this Judge accepts the testimony from the Employer's four witnesses and rejects the testimony of the Claimant and her witnesses except as otherwise specifically noted in this Decision. As noted by Dr. Hostetter, this Judge notes that Claimant is prone to exaggerate and misperceive normal conditions because of her basic personality type.
74. This Judge finds the Claimant's daughter and husband to be credible in part. This Judge finds that Dennis Colbert stated at the meeting on September 19, 2001 that a videotape existed and that he would view the same. However, this conversation occurred the day after the incident, before he had time to investigate the actual facts. He assumed the cameras were operational. Since the security systems was being overhauled, it is entirely plausible that the taping

system was not operational. Based upon the testimony of Brian Smith, Michael Schmidt and Dennis Colbert, this Judge finds that no tape of the incident exists and the statement of Dennis Colbert to the Claimant's family was spoken in ignorance.

75. Claimant and her family testified that her physical condition has dramatically changed since this incident. However, there is no medical expert testimony that Claimant's pre-existing physical conditions were aggravated or that she suffered new physical injuries as a result of this incident. There is no obvious correlation between stress and the myriad of Claimant's physical complaints including diabetes, muscular skeletal pains, ongoing blood pressure problems etc. While this Judge has no reason to doubt that Claimant suffers from these physical conditions, this Judge is not persuaded or convinced that they are work related. This Judge rejects the testimony of Claimant and her family that the physical injuries relate to the work incident.
76. This Judge finds the testimony of Claimant and her family credible that she suffered anxiety as a result of this incident. Claimant suffered such anxiety in response to Mr. Schmidt's actions that she immediately called for help from her husband and even the police, sought psychological care of Dr. Crouse and even deputized her daughter to meet with the management the next day to discuss the incident. This anxiety is corroborated by the testimony of Dr. Crouse who credibly described Claimant as being very anxious and depressed secondary to anxiety at the time he initially saw her after the event of September 18, 2001. However, there is no expert testimony that Claimant was disabled as a result of this anxiety.
77. This Judge finds as fact that Claimant's anxiety was a result of Claimant's subjective reaction or

misperception of normal work conditions. This Judge finds that Claimant was not exposed to abnormal working conditions in the early morning of September 18, 2001. In support of this, this Judge finds as follows:

A. It is unrefuted that Wal-Mart was overhauling the security camera system and that Mr. Schmidt, a Loss Prevention employee of Wal-Mart, was directed by his supervisor to go to the accounting/cash room to work on the camera system. There was no robbery on September 19, 2001 as feared by the Claimant, and Mr. Schmidt's presence and attempts to enter the accounting area were for entirely legitimate reasons.
B. Claimant admitted that during the incident, she recognized Mr. Schmidt over the closed circuit camera as previously doing work on the cameras near the ceiling of the store, and previously being accompanied by management into the cash room before this event. Claimant recognized his voice. Claimant dispersed cash to Mr. Schmidt for his travel vouchers, as authorized by management. Based on the testimony of Mr. Schmidt, this Judge finds that Claimant was even in the cash room earlier that shift to review the work to be completed.
C. Claimant described being subjected to a steady knocking and hollering, but she did not describe in her testimony any threats, profanity or seeing any weapons.
D. Throughout this relatively short incident, Claimant was secure behind a closed and locked door of the accounting room. Though Claimant described the lock as shoddy, the lock in fact worked. Moreover, Claimant realized that she could have further retreated to a more secure cash room, if necessary.

The Judge finds that there was no reasonable basis for Claimant's reaction and that her anxiety was the result of a misperception and over reaction of normal working

conditions. This finding of fact would not be any different if this Judge accepted the testimony of Claimant and her husband in their entirety.

78. This Judge finds the testimony Dr. Hostetter to be credible. As of the date of his examination, Claimant was not suffering from any work related injury. This Judge finds as credible that Claimant has a histrionic personality disorder which means that Claimant reacts in excessive ways to situations that would not evoke such a response to others. Dr. Hostetter testified that Claimant, because of her personality makeup, over reacted to the situation at the Wal-Mart, and this Judge finds this entirely credible and persuasive given the facts of this incident. This Judge only rejects the testimony of Dr. Hostetter to the extent that it suggests that Claimant did not suffer anxiety in the early morning of September 18, 2001.
79. Claimant was not disabled as a result of the events of September 18, 2001.

DISCUSSION

Claimant's Petition fails for several reasons. An employee claiming a psychiatric disability due to mental/non-physical stimuli must prove that the work-related injury was caused by actual objective abnormal working conditions, as opposed to subjective, perceived or imagined employment events, Martin v. Ketchun Inc. 568 A.2d 159(Pa. 1990). This burden of proving objective abnormal working conditions is true even if the psychological stress results in a physical injury Davis v. W.C.A.B.(Swathmore Boro) 751 A.2d 168 (Pa. 2000). Courts have repeatedly held that an honest, but mistaken, perception of job harassment that aggravates a pre-existing anxiety or causes a psychological injury is not compensable under the Workers' Compensation Act.

Hirschberg v. W.C.A.B. (Dept. of Transportation) 474 A.2d 82 (Pa. Cmwlth 1984); Masico v. W.C.A.B. (Pa. Dept. of Revenue 588 A.2d 984 (Pa. Cmwlth 1991) Claimant misperceived that she was a victim of a robbery in progress. However, the reality is that the alleged assailant was an employee of Wal-Mart's Loss Prevention unit installing video cameras in the store, and had every right to gain entrance into the accounting room. Moreover, this Judge does not find that there was even a rational basis for her belief since she saw no weapon, and recognized the man of having access to the cash room with management in the past. The Claimant was secure behind the locked door throughout the entire incident, and even could retreat to a more secure room if needed. Claimant was not exposed to abnormal working conditions in the course of her employment on September 18, 2001. This is entirely consistent with the credible testimony of Dr. Hostetter who found that Claimant's basic underlying personality results in her being overly emotional and that she over reacts to what most would consider a normal condition. In short, Claimant did not sustain her burden of establishing that she was subjected to an abnormal working condition

Moreover, Claimant's Petition must fail because of insufficient medical evidence. There is no medical testimony that Claimant was disabled as a result of this injury. There is absolutely no medical expert testimony that Claimant suffered a physical injury or an aggravations of her pre-existing physical condition.

CONCLUSIONS OF LAW

1. All parties are bound by the provisions of the Pennsylvania Workers' Compensation Act, as amended.
2. Claimant failed to carry her burden of proof in establishing that she was exposed to abnormal

working conditions which resulted in a psychiatric injury.

3. Claimant failed to carry her burden of proof in establishing that she suffered disability as a result of any psychiatric injury.
4. Claimant failed to carry her burden of proof that she suffered any physical injury or an aggravation of her physical injury as a result of any work incident.

ORDER

AND NOW, this 23rd day of January 2004, it is hereby **ORDERED AND DECREED** that Claimant's Claim Petitions are **DISMISSED**.

"s/Robert J. Benischeck"
Workers' Compensation Judge
RJB/pem
January 16, 2004
Lancaster PA